

# JANUARY 2017: THE 12 BIGGEST LABOR AND EMPLOYMENT LAW STORIES

Insights  
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The world of labor and employment law is always evolving at a rapid pace, leading us to summarize a few of the most significant cases from the previous month. January 2017 was a month like no other, however, leading us to expand our summary even beyond a typical “top 10” list. In order to make sure that you stay on top of the latest developments, here is a quick review of the 12 biggest stories from last month that all employers need to know about:

## 1. President Trump Takes Office; Whirlwind Of Workplace Law Developments Follow

To some it might seem like ages ago, but it was only very recently – January 20, in fact – that Donald Trump was sworn in as our nation’s 45th president. In the short time that followed, the new president took a number of actions that have impacted workplace law:

- Shortly after being sworn in on January 20, he signed an executive order which appears to begin to repeal the Affordable Care Act (ACA), following through on one of his primary campaign promises. Although the executive order seems to have no immediate impact on employers’ obligations under the law, you can expect further action taken by administration officials or Congress in the near future ([read more here](#)).
- On his first full business day in office, he met with a consortium of about a dozen union leaders and members for what was described as a “listening session” at the White House. Although he had met with a similarly sized

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group of business executives and leaders earlier in the day, some employers might be nervous to learn about this union meeting. However, if early reports about the meeting are any indication, employers should have little concern, as it seemed to be more about job creation than labor law ([read more here](#)).

- On January 27, he signed a controversial executive order focusing on immigration issues entitled "Protecting the Nation from Terrorist Entry into the United States by Foreign Nationals." It created an immediate freeze on all entry for individuals from Syria, Iran, Libya, Somalia, Yemen, Iraq, and Sudan, affecting both immigrant and non-immigrant visa holders. Employers were forced to adjust quickly with respect to foreign-born workers in their workforce ([read more here](#)).
- Early on January 31, the White House issued a statement announcing that it would continue to enforce President Obama's 2014 executive order that protects the rights of the LGBTQ community in the federal contractor workplace. While this statement does not break any new legal ground, it is a reminder to all federal contractors that they have an obligation to ensure antidiscrimination measures apply to all workers regardless of sexual orientation or gender identity ([read more here](#)).
- Finally, in the evening on January 31, the president selected Judge Neil Gorsuch to fill the vacant seat on the Supreme Court bench. Assuming he is confirmed by the Senate, Justice Gorsuch would occupy a critical position on the Court, assumedly aligning with the more conservative bloc of justices to form a slim majority in tight cases. If you want to see our comprehensive summary on how we predict Justice Gorsuch would treat workplace law cases that come before the Supreme Court, you can [read more here](#).

## 2. Labor Secretary Confirmation Hearings Delayed Indefinitely

President Trump announced that Andrew Puzder would be his choice for Secretary of Labor [back on December 9](#), with an eye towards having Puzder confirmed and on the cabinet by the time Trump was inaugurated on January 20. However,

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not only has that not happened, but there is no current timetable for his Senate confirmation hearings. [On January 31](#), the Senate committee announced that this hearing would be postponed for a fourth time, and as of the time of publication, no rescheduled date has been announced.

### **3. Supreme Court Agrees To Wade Into Class Waiver Conflict**

In a widely expected move, the U.S. Supreme Court agreed to settle a dispute about whether employers can use mandatory class action waivers with their workers by accepting review of a trilogy of cases on January 13. The decision, which should be issued by June 2017, will provide clarity to a topic that has become increasingly muddled over the past year. Employers will spend the next several months with their fingers crossed hoping the decision falls in their favor ([read more here](#)).

### **4. USDOL Delays Overtime Appeal Filing**

Late last year, the U.S. Department of Labor (USDOL) filed an appeal to the 5th Circuit Court of Appeals seeking to overturn the preliminary injunction that prevented the salary-related changes in the federal Fair Labor Standards Act's (FLSA's) "white collar" overtime exemptions from taking effect. But when the Trump administration took control over the USDOL on January 20, many expected a different and more employer-friendly approach with regard to the appeal. Sure enough, on January 25, the new USDOL filed a request to delay the case for 30 days so "incoming leadership personnel [has] adequate time to consider the issues." [The next day, the court granted the extension request](#), and the government's reply brief will be filed on or before March 2.

### **5. Federal Appeals Court Creates New And Troubling Joint Employment Standard**

In a pair of sure-to-be controversial decisions, the 4th Circuit Court of Appeals created a new and troubling standard to determine whether individuals should be considered "joint employees" of multiple entities on January 25. The new standard, which makes it far easier for employers to be caught up as defendants in wage and hour claims, may very well be adopted by other courts and leak into other areas of the country. For this reason, all employers

should familiarize themselves with decisions and adapt their operations as necessary ([read more here](#)).

## **6. Employers Required To Use New I-9 Form**

Starting on January 22, all employers are now required to use the new I-9 form (version date 11/14/2016) to verify the identity and employment authorization eligibility of employees. A link to the new form [can be found here](#). Failure to ensure proper completion and retention of Forms I-9 may subject you to civil money penalties of up to \$2,156 per I-9 form, and, in some cases, criminal penalties ([read more here](#)).

## **7. Past Pay Now Private In Philadelphia**

Philadelphia became the first city in the United States to prohibit employers from inquiring about a prospective employee's wage history during the hiring process. Philadelphia Bill No. 160840, also known as the "wage equity ordinance," was passed by the City Council on December 8 and signed by Mayor Jim Kenney on January 23. It will take effect on May 23, 2017 (120 days from the date of signing) ([read more here](#)).

## **8. FLSA Civil Penalties Increase – Again**

For the second time in under a year, the USDOL published increases in the civil money penalties it can impose for certain violations of the FLSA and accompanying regulations. The agency announced that it will apply the changes to penalties assessed after January 13, 2017 for predicate violations that occurred after November 2, 2015 ([read more here](#)).

## **9. Federal Contractors Ordered To Provide Privacy Training**

Effective January 19, federal contractors will need to comply with privacy training rules intended to ensure that their workforces protect personally identifiable information. Federal contractors will need to follow a five-step plan to comply with the new rules issued by the Department of Defense, General Services Administration, and National Aeronautics and Space Administration ([read more here](#)).

## **10. Kentucky Becomes 27th Right-To-Work State**

On January 9, Kentucky Governor Matt Bevin signed into law a bill that made Kentucky a right-to-work state. The law took effect immediately. Employers in the state should familiarize themselves with this significant new development, as it could have an impact on your workplace ([read more here](#)).

## **11. West Coast Auto Dealers Dealt Another Loss In Service Advisor Exemption Battle**

In a disappointing but perhaps unsurprising decision, the 9th Circuit Court of Appeals once again ruled on January 9 that service advisors employed by automobile dealerships do not qualify for the Section 13(b)(10)(A) overtime exemption under the FLSA ([read more here](#)).

## **12. Court Denies Seizure Remedy In Trade Secrets Act Case**

The new Defend Trade Secrets Act (DTSA), enacted last year, allows a court to order the physical seizure of property in “extraordinary circumstances” to prevent the dissemination of trade secrets. On January 6, a federal court ruled on this provision of the DTSA in one of the nation’s first rulings on the matter, denying an employer’s request to have a company-issued laptop, mobile phone, and company emails seized from two defecting employees. Although the employer did not obtain the relief sought, the decision remains instructive regarding the high burden necessary to obtain a seizure order ([read more here](#)).

If you have any questions about these developments or how they may affect your business, please contact your Fisher Phillips attorney.

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*This Legal Alert provides an overview of specific legal developments. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.*